In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-648

JOHN FARLEY OWEN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The issue is whether evidence seized in a pre-*Almeida-Sanchez* roving patrol search of petitioner's automobile should have been suppressed.

After a jury trial in the United States District Court for the Southern District of Texas, petitioner was convicted of illegally importing marihuana into the United States (21 U.S.C. 952(a)), possessing marihuana with intent to distribute it (21 U.S.C. 841(a)(1)), and conspiring to commit the importation offense (18 U.S.C. 371). On the conspiracy and possession counts, petitioner was given concurrent sentences of 40 months' imprisonment, with a special parole term of two years, and was fined $1,000; on the importation count, he was given a five-year suspended sentence and five years' probation, with a special parole term of two years. The court of appeals affirmed (Pet. App. 11-12).

The evidence showed that petitioner's automobile was routinely stopped and inspected for aliens on December 11, 1972, pursuant a "roving patrol" conducted by Border Patrol officers about 50 miles north of the Mexican Border at Hebbronville, Texas. In the course of the inspection, 232 pounds of marihuana were discovered in the vehicle. The court of appeals, in keeping with its decision in *Miller* v. *United States*, 492 F.2d 37, pending on petition for a writ of certiorari, No. 73-6975, held that the principles of this Court's decision in *Almeida-Sanchez* v. *United States*, 413 U.S. 266, should not be applied retroactively to the roving patrol search in this case.

The retroactivity of *Almeida-Sanchez* is before this Court in *United States* v. *Peltier*, No. 73-2000, certiorari granted, November 11, 1974. We suggest, therefore, that the Court defer disposition of the present petition pending the decision in *Peltier* and then dispose of it in accordance with that decision.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1975.